

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Acuity Brands, Inc.

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File No.: EB-SED-16-00021597

NAL/Acct. No.: 201832100002

FRN: 0023988462

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 21, 2017****Released: November 21, 2017**

By the Acting Deputy Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. We propose a penalty of \$25,000 against Acuity Brands, Inc. (Acuity or Company) for apparently marketing radio frequency devices that were not labeled in accordance with the Commission's rules. Specifically, Acuity marketed three models of consumer-grade electronic fluorescent lighting ballasts—two since 2006 and one since 2009—that did not have the FCC logo affixed to them. Moreover, after becoming aware of these apparent violations, Acuity continued to market two models of the ballasts at issue for approximately six months, thus warranting an increased penalty.

2. As discussed below, Acuity apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.<sup>2</sup> We take this action today as part of our duty to ensure that radio frequency devices are marketed in accordance with the Commission's rules. Consistent with this goal, we find it necessary to enforce the rules requiring that devices subject to equipment authorization are properly labeled to inform a consumer that such devices have been tested for compliance under the Commission's technical rules because those devices could easily cause interference if they do not conform to those rules.

**II. BACKGROUND**

3. Acuity is a publicly-traded company that provides lighting and building management solutions for commercial and residential uses throughout North America, and in Europe and Asia. In January 2016, the Office of Engineering and Technology (OET) conducted tests on Acuity's AccuPro Model AP-RC-432IP-120-1 fluorescent lighting ballast after receiving complaints of interference reportedly caused by the Company's ballasts. In April 2016, OET referred the matter to the Enforcement Bureau (Bureau) for investigation and possible enforcement action on whether Acuity marketed the AccuPro Model AP-RC-432IP-120-1 prior to receiving the appropriate equipment authorization under the Commission's rules. On June 22, 2016, the Bureau's Spectrum Enforcement Division (SED) issued a Letter of Inquiry (LOI) to Acuity which directed the Company to submit a sworn written response to

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 CFR §§ 2.803(b)(2), 18.209(b). We note that, in an order released on July 14, 2017, the requirement under Section 18.209(b) of the Commission's rules was modified so that use of the FCC logo became voluntary on November 2, 2017, as published in the Federal Register. *See Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, First Report and Order, FCC 17-93, ET Docket No. 15-170 (rel. July 14, 2017). Because the violations at issue occurred while Section 18.209(b) was in effect, the modification of the rule has no bearing on the current matter.

questions about its marketing of potentially non-compliant fluorescent lighting ballasts.<sup>3</sup> Acuity responded on August 22, 2016 (LOI Response).<sup>4</sup>

4. Under the Commission's equipment authorization procedures, consumer-grade ballasts are subject to either the Declaration of Conformity or certification procedure, and non-consumer-grade (i.e., non-residential) ballasts are subject to the verification procedure.<sup>5</sup> These procedures require responsible parties to ensure that certain radio frequency devices, such as Acuity's lighting ballasts, adhere to the applicable technical and labeling requirements prior to being marketed.<sup>6</sup>

5. In its LOI Response, Acuity states that it markets consumer-grade and non-consumer-grade lighting ballasts.<sup>7</sup> Additionally, Acuity submitted test reports which showed that the two types of fluorescent lighting ballasts it markets are compliant with the relevant technical requirements.<sup>8</sup> However, Acuity admitted that three models of its consumer-grade lighting ballasts did not have the FCC logo affixed to them, despite acknowledging the applicability of this labeling requirement for those models under Section 18.209(b) of the Commission's rules.<sup>9</sup> Additionally, Acuity provided that it had been marketing two of these non-compliant models since 2006 and one since 2009.<sup>10</sup> The Company ceased marketing one of the models in July 2016, but continued marketing the other two models without appropriate labeling until February 2017.<sup>11</sup>

### III. DISCUSSION

#### A. Acuity Apparently Violated Section 302(b) of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's Rules

6. We find that Acuity apparently willfully and repeatedly violated Section 302(b) of the Act<sup>12</sup> and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.<sup>13</sup> Section 302(b) of the Act prohibits the marketing of radio frequency devices which do not comply with the Commission's rules.<sup>14</sup> Section 2.803(b)(2) of the Commission's rules provides that radio frequency devices that are subject to verification or Declaration of Conformity procedures may not be marketed unless the device complies

<sup>3</sup> See Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Vernon J. Nagel, Chairman, President, and Chief Executive Officer, Acuity Brands, Inc. (June 22, 2016) (on file in EB-SED-16-00021597).

<sup>4</sup> See Letter from David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel for Acuity Brands, Inc., to Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 22, 2016) (LOI Response) (on file in EB-SED-16-00021597). The Spectrum Enforcement Division had previously granted Acuity's request for an extension of time to file its response. See E-mail from Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to David H. Solomon, Esq., Counsel for Acuity Brands, Inc. (July 8, 2016, 13:35 ET) (on file in EB-SED-16-00021597).

<sup>5</sup> See 47 CFR § 18.203.

<sup>6</sup> See 47 CFR §§ 2.803, 2.909.

<sup>7</sup> See LOI Response at 5.

<sup>8</sup> 47 CFR § 18.307(c).

<sup>9</sup> See LOI Response at 10.

<sup>10</sup> See LOI Response at 6.

<sup>11</sup> See E-mail from Timothy Cooney, Esq., Counsel to Acuity Brands, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 21, 2017, 14:19 ET) (on file in EB-SED-16-00021597) (Mar. 21, 2017 E-mail).

<sup>12</sup> 47 U.S.C. § 302a(b).

<sup>13</sup> 47 CFR §§ 2.803(b)(2), 18.209(b).

<sup>14</sup> 47 U.S.C. § 302a(b).

with all applicable technical, labeling, identification and administrative requirements.<sup>15</sup> Section 18.209(b) requires that devices authorized under the Declaration of Conformity procedure be labeled with the FCC logo.<sup>16</sup>

7. In its LOI response, Acuity admitted that it marketed three models of its fluorescent lighting ballasts, including the AccuPro Model AP-RC-432IP-120-1, without the FCC logo affixed to them, in violation of Section 18.209(b) of the Commission's rules. Moreover, Acuity had been marketing these models for at least eight years with a considerable market presence; for instance, the Company sold hundreds of thousands of units of these models from January 2016 to July 2016.<sup>17</sup> After receiving the LOI, Acuity took preliminary steps to bring the labeling of the subject ballasts into compliance. In mid-February 2017, the Company informed SED that the three ballast models were in compliance with the labeling requirements.<sup>18</sup> Between receiving the LOI and coming into compliance, however, and after becoming aware of the violations, the Company continued to market two models of the subject ballasts without the appropriate labeling.<sup>19</sup> Accordingly, we find that Acuity apparently violated Section 302(b) of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.

### **B. Proposed Forfeiture**

8. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission."<sup>20</sup> In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>21</sup> In addition, the Commission has established forfeiture guidelines, which provide base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>22</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>23</sup>

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<sup>15</sup> 47 CFR § 2.803(b)(2).

<sup>16</sup> 47 CFR § 18.209(b).

<sup>17</sup> See LOI Response at Attachment No. 7.

<sup>18</sup> See Mar. 21, 2017 E-mail.

<sup>19</sup> See E-mail from Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Timothy Cooney, Esq., Counsel to Acuity Brands, Inc. (Jan. 10, 2017, 14:38 ET) and Reply E-mail from Timothy Cooney, Esq., Counsel to Acuity Brands, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 10, 2017, 14:44 ET) (on file in EB-SED-16-00021597).

<sup>20</sup> 47 U.S.C. § 503(b).

<sup>21</sup> *Id.* § 503(b)(2)(E). See 47 CFR § 1.80(b)(8); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>22</sup> 47 CFR § 1.80(b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

<sup>23</sup> 47 CFR § 1.80(b), Note to paragraph (b)(8). See *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

9. Under the *Forfeiture Policy Statement*<sup>24</sup> and Section 1.80 of the Commission's rules,<sup>25</sup> the base forfeiture amount for the marketing of unauthorized equipment is \$7,000 per model. In similar cases involving the marketing of improperly labeled equipment, the Bureau used a \$7,000 per model approach as a starting point, using the base forfeiture amount for unauthorized equipment marketing.<sup>26</sup> Indeed, Section 2.803(b)(2) specifically prohibits the marketing of a radio frequency device unless "the device complies with all applicable technical, *labeling, identification* and administrative requirements."<sup>27</sup> We find this base forfeiture amount applicable in this case since it too involves a labeling violation. Accordingly, we propose a total base forfeiture of \$14,000, using the \$7,000 per model approach for each of the two instances in which Acuity marketed lighting ballasts without the required labeling.

10. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that upward adjustments of the proposed forfeiture amount are warranted for the intentional nature of the violations, the duration of the violations, and the Company's ability to pay. First, we find that an upward adjustment is merited for Acuity's apparent intentional violation of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules, based on the Company's decision to continue marketing two models of the subject ballasts without the appropriate labeling for approximately six months after becoming aware of, and acknowledging, the violations.<sup>28</sup> Second, we find that an upward adjustment is warranted based on the extended duration of Acuity's violations,<sup>29</sup> as evidenced by the fact that it marketed three models of improperly labeled lighting ballasts for at least eight years; specifically, two models since 2006 and one model since 2009.<sup>30</sup> Third, we find an upward adjustment is warranted for the Company's ability to pay. In the *Forfeiture Policy Statement*, the Commission determined that large or highly profitable companies should expect to pay a higher forfeiture for violations of the Act and the Commission's rules.<sup>31</sup> In this regard, we recognize Acuity's global presence, as well as its net sales and gross profits in 2016—approximately \$3.2 billion and \$1.4 billion respectively.<sup>32</sup> We therefore apply an upward adjustment of the base forfeiture amount for these three

<sup>24</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17113.

<sup>25</sup> 47 CFR § 1.80.

<sup>26</sup> See, e.g., *Cellphone-Mate, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8988, 8990, para 5 (EB 2010) (forfeiture paid); *Wireless Extenders, Inc.*, 25 FCC Rcd 8983, 8985-86, para. 5 (EB 2010) (forfeiture paid).

<sup>27</sup> 47 CFR § 2.803(b)(2) (emphasis added). See 47 CFR § 18.209(b) ("Devices authorized under the Declaration of Conformity procedure shall be labelled with the logo shown below. . . . It shall be permanently affixed to the product and shall be readily visible to the purchaser at the time of purchase.").

<sup>28</sup> See *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827–28, para. 22 (2006) (*Behringer*) (upward adjustment for, among other things, Behringer's continued marketing of unauthorized devices despite knowing that it was in violation), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid).

<sup>29</sup> See *Behringer*, 21 FCC Rcd at 1827-28, para. 22 (2006) (upward adjustment for, among other things, extended duration of the violations); *Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810–11, paras. 10–11 (2012) (upward adjustment of the base forfeiture because of extended duration of the violation); *Midessa Television Ltd. P'ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250–51, para. 11 (2014) (forfeiture paid) (same). Although one violation is not actionable due to the expiration of the statute of limitations period, the Commission may consider facts arising before the expiration date in determining an appropriate forfeiture amount for acts that occurred inside of the statute of limitations period. See *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000).

<sup>30</sup> See LOI Response at 6.

<sup>31</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, para. 24 (1997).

<sup>32</sup> In its Form 10-K, the Company also disclosed that it earned \$290 million in net income in 2016. See Acuity Brands, Inc., 2016 Annual Report (Form 10-K) at 23 (filed Oct. 27, 2016), available at [http://media.corporate-ir.net/media\\_files/IROL/13/130194/AR2016/pdf/Acuity\\_201610-K.pdf](http://media.corporate-ir.net/media_files/IROL/13/130194/AR2016/pdf/Acuity_201610-K.pdf).

factors.<sup>33</sup> Taken together, we propose a total upward adjustment of \$11,000, which will protect the interests of consumers and serve as a deterrent against future violations of the Commission's rules.

11. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. In coming to this conclusion, we recognize that in the past the Bureau has lowered the proposed forfeiture amount in most cases where the device at issue is improperly labeled or lacks the appropriate information disclosure requirements but is otherwise compliant with the technical rules, as is the case here.<sup>34</sup> In those cases, the Bureau rationalized that, since marketing an improperly labeled device is not as significant a violation as marketing an unauthorized or technically non-complaint device, a downward adjustment is warranted.<sup>35</sup> We find this reasoning unpersuasive to justify a downward adjustment in this case.

12. Reducing the base forfeiture amount in this case would diminish the deterrent effect of the proposed forfeiture. The fact that Acuity continued to market the improperly labeled ballasts for six months after learning of the violation highlights the importance of establishing a forfeiture that serves as a sufficient incentive to comply with the rules.<sup>36</sup> We are also mindful that the equipment marketing rules have been in place for almost two decades<sup>37</sup> and that Acuity, a publicly-traded corporation established in 2001, had more than sufficient opportunity to create a compliance program, scaled to the size of the company, to ensure that it conformed to our rules.<sup>38</sup> Acuity has not provided a reason as to why it

<sup>33</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

<sup>34</sup> See, e.g., *J.J. Mackay Canada Ltd.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5043, 5047-48, para. 11 (EB 2014) (forfeiture paid); *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para. 5; *Proxim Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1145, 1149, para. 12 (EB 2009) (forfeiture paid); *Multi-Tech Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17824, 17827-28, para. 8 (EB 2008) (forfeiture paid).

<sup>35</sup> See, e.g., *Proxim Wireless Corporation*, 24 FCC Rcd at 1149, para. 12; *Multi-Tech Systems, Inc.*, 23 FCC Rcd at 17827-28, para. 8; *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, n.22 (citing to *Proxim Wireless Corporation*, 24 FCC Rcd at 1149). The Bureau also noted that the \$7,000 base forfeiture is typically imposed for the marketing of devices that are not in compliance with applicable technical requirements or are not authorized by an equipment authorization. See, e.g., *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para. 5.

<sup>36</sup> In other cases, the Bureau has declined to apply downward adjustments established by precedent, citing, as reasons for such action, the duration of the violation, and the lack of incentive for parties to comply with the Commission's rules, among other things. See, e.g., *South Bay Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 972, 974, para. 7 (EB 2011) (In declining to follow precedent to lower the forfeiture amount, noting that the unlicensed operation violation had been ongoing for several years and that the reduced forfeiture amounts applied in past cases did not appear to create sufficient incentives for licensees to comply with the Commission's rules), *forfeiture ordered*, 27 FCC Rcd 3013 (EB 2012) (forfeiture paid); *DTG Operations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17144, 17146, para. 8 (EB 2010) (Declining to lower forfeiture amount, citing that the unlicensed operation was ongoing for 11 years and that such action posed significant public safety risk), *forfeiture ordered*, 27 FCC Rcd 3252 (EB 2012) (forfeiture paid).

<sup>37</sup> See generally *Amendment of Parts 2 & 15 of the Commission's Rules to Deregulate the Equip. Authorization Requirements for Digital Devices*, 11 FCC Rcd 17915 (1996) (Adopting Sections 2.906, Declaration of Conformity, and 2.909, Responsible Parties), *recon. granted in part*, 12 FCC Rcd 10623 (1997); *Amendment of Parts 2, 15, 18 & Other Parts of the Commission's Rules to Simplify & Streamline the Equip. Authorization Process for Radio Frequency Equip.*, 13 FCC Rcd 11415 (1998) (Revising Section 18.209, Identification of Authorized Equipment); *Revision of Part 2 of the Commission's Rules Relating to the Mktg. & Authorization of Radio Frequency Devices*, 12 FCC Rcd 43 (1997) (Amending Section 2.803 to incorporate Declaration of Conformity procedure). We also observe that the equipment authorization rules have been in existence almost twice as long as in the earlier cases involving labeling violations. See, e.g., *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para. 5; *Wireless Extenders, Inc.*, 25 FCC Rcd at 8985-86, para. 5.

<sup>38</sup> See *LOI Response* at 1. Additionally, and as noted above, promoting compliance with the labeling requirement of this rule is necessary to inform consumers that a radio frequency device is compliant with the Commission's rules to

(continued...)



marketed three models of its fluorescent lighting ballasts without the FCC logo affixed to them, nor are we independently aware of any mitigating reason.<sup>39</sup> Thus, under the totality of the evidence, we find no basis to make any downward adjustment of the proposed forfeiture.

13. The enforcement of our rules is crucial to ensuring that parties comply with them even when faced with a business decision, particularly when the violation involves a rule articulating an express and unambiguous requirement. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the upward adjustments discussed above, we propose a total forfeiture of \$25,000, which is the aggregate of \$14,000 (total base forfeiture) plus \$11,000 (total upward adjustment), for which Acuity is apparently liable.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>40</sup> and Sections 1.80 of the Commission's rules,<sup>41</sup> Acuity Brands, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violations of Section 302(b) of the Act<sup>42</sup> and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.<sup>43</sup>

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>44</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Acuity Brands, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 18 below.

16. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Acuity Brands, Inc. shall send electronic notification of payment to Paul Noone at Paul.Noone@fcc.gov, Leslie Barnes at Leslie.Barnes@fcc.gov, and Samantha Peoples at Samantha.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>45</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call

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avoid harmful interference. This policy goal is especially important given the evolution of the wireless marketplace since 2010, when the last decision involving solely a labeling violation with a forfeiture reduction was released. *See, e.g., Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para 5. Since then, there has been a steady increase of radio frequency devices in the wireless marketplace, reflecting the essential and ubiquitous role wireless services has played in Americans' daily lives. *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, FCC 17-126, 2, 12 (rel. Sept. 27, 2017) (CTIA estimates that the number of mobile wireless connections has grown from 296.3 million in 2010 to 395.9 million in 2016.). Such change over the course of seven years has also compelled us to adjust our approach to ensure that our enforcement actions continue to be consistent with this policy goal.

<sup>39</sup> Indeed, Acuity appears to understand our equipment authorization rules to some degree, as evidenced by the Company's submission of test reports in response to the LOI, which showed that the two types of fluorescent lighting ballasts it markets are compliant with the relevant technical rules.

<sup>40</sup> 47 U.S.C. § 503(b).

<sup>41</sup> 47 CFR § 1.80.

<sup>42</sup> 47 U.S.C. § 302a(b).

<sup>43</sup> 47 CFR §§ 2.803(b)(2), 18.209(b).

<sup>44</sup> 47 CFR § 1.80.

<sup>45</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>46</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

18. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission’s rules.<sup>47</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Paul Noone at [Paul.Noone@fcc.gov](mailto:Paul.Noone@fcc.gov), Leslie Barnes at [Leslie.Barnes@fcc.gov](mailto:Leslie.Barnes@fcc.gov), and Samantha Peoples at [Samantha.Peoples@fcc.gov](mailto:Samantha.Peoples@fcc.gov).

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

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<sup>46</sup> See 47 CFR § 1.1914.

<sup>47</sup> 47 CFR §§ 1.16, 1.80(f)(3).

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Vernon J. Nagel, Chairman of the Board, President and Chief Executive Officer, Acuity Brands, Inc., 1170 Peachtree Street NE, Suite 2300, Atlanta, Georgia 30309, and to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, 1800 M Street NW, Suite 800N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion  
Acting Deputy Chief  
Enforcement Bureau